



October 26, 2016

**BY FAX TO:** (601) 359-5680  
Commissioner Marshall L. Fisher  
Office of the Commissioner  
Mississippi Department of Corrections  
633 North State Street  
Jackson, MS 39202  
Tel: (601) 359-5600

*Re: Mississippi Department of Corrections' (MDOC) Proposed "Immediate Family Only" Visitation Policy Is Unconstitutional, Violates Federal Law, And Undermines MDOC's Mission*

AMERICAN CIVIL  
LIBERTIES UNION OF  
MISSISSIPPI  
P.O. BOX 2242  
JACKSON, MS 39225  
T/601.354.3408  
WWW.ACLU-MS.ORG

Dear Commissioner Fisher:

We are writing on behalf of family members and religious leaders regarding MDOC's proposed policy to exclude all visitors except "immediate family" as defined by MDOC. The Policy was announced on August 31, 2016 and then postponed. MDOC should publically post that they no longer plan to implement the Policy. If the Policy is still under consideration, MDOC should be advised that the Policy's enforcement would be unconstitutional, violate federal law, and would therefore expose MDOC to suit in federal court. The Policy provides:

**Effective September 1, 2016, visitors will be of immediate family as defined by MDOC. Also, Offenders will be limited to ten (10) persons of immediate family as defined by MDOC on their visitation list at any one time.**

MDOC has defined immediate family as: a spouse, children, stepchildren raised prior to age 12, brothers, sisters, parents, grandparents, grandchildren, or persons **documented as acting in place of parent as surrogate prior to age 12** (i.e., foster parent, stepparent, or relative who raised the individual as a child) and can be **documented by law enforcement, school, Human Services records, or employer statement.**

**This excludes ALL friends, pastors, girlfriends, fiancés, cousins, nephews, nieces, aunts, uncles, in-laws and anyone else that is not listed above.<sup>1</sup>**

---

<sup>1</sup> MDOC initially announced the Policy on posted notices bearing the seal of MDOC Commissioner Fisher, *see, e.g., Attachments*. It later delayed enforcement, *see id.*, then postponed the policy for an unknown period of time. *See, e.g.,* Jerry Mitchell & Sarah Fowler, "MDOC postpones visitation change," *The Clarion-Ledger* (Sept. 6, 2016), available at <http://www.clarionledger.com/story/news/2016/09/06/mdoc-postpones-visitation-change/89922172/> (providing no source or timeframe for the news regarding postponement).

Enforcing the Policy would infringe on long-established rights guaranteed to prisoners and their visitors under the First and Fourteenth Amendments, and it would violate federal law protecting prisoners' religious exercise rights.<sup>2</sup> It would also disproportionately impact prisoners on the basis of race and undermine MDOC's mission to promote safety and reduce recidivism.

First, the Policy would violate federal law by barring prisoners' access to visits from outside clergy. Federal law is highly protective of prisoners' religious exercise rights, which includes the right to clergy visits.<sup>3</sup> Barring them would "substantially burden" a prisoners' religious exercise rights,<sup>4</sup> and MDOC's concerns regarding past undisclosed security violations<sup>5</sup> are legally insufficient to justify the intrusion. A government's aim must be "compelling" and "*advanced in the least restrictive means*" as applied to individuals.<sup>6</sup> As far as we are able to determine, no other state enforces such a clergy ban; this fact will weigh heavily against MDOC in any legal challenge, as it proves readily-available alternatives to the Policy exists.<sup>7</sup> Because the Policy completely and indiscriminately burdens prisoners' protected religious exercise right to be visited by outside clergy, the Policy is unlawful.<sup>8</sup>

---

<sup>2</sup> The Policy would infringe on rights guaranteed to prisoners and their visitors under the First and Fourteenth Amendments and to prisoners under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") (codified at 42 U.S.C. § 2000cc).

<sup>3</sup> See, e.g., *Kikumura v. Hurley*, 242 F.3d 950, 960 (10th Cir. 2001) (finding visits from outside clergy—even from a sect not central to the prisoners' religious practice—to be a protected exercise of religion, and citing the RLUIPA congressional record, 139 Cong. Rec. S14, 465-66 (daily ed. Oct. 27, 1993): Sen. Hatfield found it unacceptable that a "prison ministries group, which has successfully rehabilitated many prisoners, has been denied access to prisoners in Maryland"; Sen. Dole stated, "[I]f religion can help just a handful of prison inmates get back on track, then the inconvenience of accommodating their religious beliefs is a very small price to pay.").

<sup>4</sup> See, e.g., *id.* (explaining how RLUIPA amended the Religious Freedom Restoration Act (RFRA), following *City of Boerne v. Flores*, 521 U.S. 507 (1997), to define "religious exercise" as including "any exercise of religion, whether or not compelled by, or central to, a system of religious belief.") (internal quotations omitted); see also *Young v. Erickson*, 758 F. Supp. 2d 777 (E.D. Wis. 2010) (denying summary judgment and qualified immunity to defendants on prisoner's First Amendment claim that he was denied a visit with an Imam, where the heavier burden of RLUIPA may not have been met at all).

<sup>5</sup> See, e.g., Tasneem Nashrulla, "This Mississippi Prison Issued a Notice Forbidding Girlfriends, Fiancés, and Pastors to Visit Inmates," *BuzzFeed News* (Sept. 1, 2016, and updated Sept. 2, 2016), available at [https://www.buzzfeed.com/tasneemnashrulla/this-mississippi-prison-issued-a-notice-forbidding-girlfriend?utm\\_term=.idR2o7WBv#.iyKNY04jO](https://www.buzzfeed.com/tasneemnashrulla/this-mississippi-prison-issued-a-notice-forbidding-girlfriend?utm_term=.idR2o7WBv#.iyKNY04jO) (reporting that an MDOC's spokesperson first stated the Policy was "under review" and was not "finalized," then later said, "The recent change in the visitation policy was prompted by security violations that are being investigated. Upon completion of the investigation, MDOC will consider re-evaluating the policy.").

<sup>6</sup> See, e.g., *Kikumura v. Hurley*, 242 F.3d at 960-62 (explaining that, where the *Turner* rests on whether a prison regulation has a reasonable relationship to legitimate penological interests, the RFRA analysis is fundamentally different: a Court must "consider whether the 'application of the burden' to the claimant 'is in furtherance of a compelling governmental interest' and 'is the least restrictive means of furthering that compelling governmental interest.'" (emphasis added) (quoting 42 U.S.C. § 2000bb-1(b); other internal quotations omitted)).

<sup>7</sup> See, e.g., *Holt v. Hobbs*, 135 S.Ct. 853, 866 (2015) (finding that "the Department failed to show, in the face of petitioner's evidence, why the vast majority of States and the Federal Government permit inmates to grow ½-inch beards, either for any reason or for religious reasons, but it cannot. ... That so many other prisons allow inmates to grow beards while ensuring prison safety and security suggests that the Department could satisfy its security concerns through a means less restrictive than denying petitioner the exemption he seeks").

<sup>8</sup> This letter assumes that the Policy does not seek to interfere in any way with prisoners' constitutional right to contact visitation with attorneys; if it does, the Policy is also unlawful as a violation of prisoners' Fourteenth Amendment rights. See, e.g., *Bounds v. Smith*, 430 U.S. 817, 822 (1977) (providing that the Fourteenth Amendment



Second, the Policy would infringe on the fundamental constitutional right to maintain family relationships. The United States Supreme Court has long-recognized the fundamental constitutional right of intimate and family association, which extends to the non-nuclear family: "Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family," as "[t]he tradition of uncles, aunts, cousins," and other extended family "sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition."<sup>9</sup> Constitutionally protected child-rearing<sup>10</sup> decisions "long have been shared" with extended family "who may take on major responsibility for the rearing of the children."<sup>11</sup> The "constitutional shelter" afforded to "certain kinds of highly personal relationships" are meant to protect them from "unwarranted state interference."<sup>12</sup>

The constitutional right to intimate association survives incarceration, though "[s]ome curtailment of [the freedom of association] must be expected in the prison context."<sup>13</sup> A prison regulation that implicates a surviving constitutional right must be rationally related to a legitimate and neutral penological interest.<sup>14</sup>

---

guarantees prisoners' meaningful access to the courts); *Dreher v. Sielaff*, 636 F.2d 1141 (7th Cir.1980) (regarding contact attorney visitation in light of the constitutional right to access to the courts); *Ching v. Lewis*, 895 F.2d 608, 609 (9th Cir. 1990) (holding that a prisoner's right of access to the courts includes contact visitation with counsel). The Policy is also unlawful in so far as it would prevent a consular officer from visiting a foreign national in prison. Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261 at Article 36 (1)(c).

<sup>9</sup> *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 504-05 (1977) (citations omitted) (striking down a housing law criminalizing, as insufficiently blood-related, a family household of two cousins raised like brothers by their grandmother; explaining that, particularly "in times of adversity," "the broader family has tended to come together for mutual sustenance.") (emphasis added).

<sup>10</sup> *Id.* at 505, citing *Wisconsin v. Yoder*, 406 U.S. 205, 232-233 (1972) (regarding education and socialization); *Meyer v. State of Nebraska*, 262 U.S. 390, 399-401 (1923) (regarding the right to "establish a home," educate, and "bring up children"); *Pierce v. Society of the Sisters of the Holy Names*, 268 U.S. 510, 534-35 (1925) (regarding the "liberty of parents and guardians" to "direct the upbringing and education of children under their control, as "[t]he child is not the mere creature of the State," and "those who nurture him and direct his destiny" have a right to control their upbringing) (emphasis added).

<sup>11</sup> *Id.* (recognizing that, "Out of choice, necessity, or a sense of family responsibility," "it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home"); *Id.* (citing *Prince v. Massachusetts*, 321 U.S. 158 (1944), which recognized the right to direct the upbringing of children, and describing *Prince* as speaking "broadly of family authority as against the State, in a case where the child was being reared by her aunt, not her natural parents.") *Id.* at 505, n. 15.

<sup>12</sup> *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618-19 (1984) (reaffirming the First Amendment right of intimate association as distinct from the First Amendment right to expressive association, as the former "reflects the realization that individuals draw much of their emotional enrichment from close ties with others," and that "[p]rotecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty.").

<sup>13</sup> *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (providing that the Supreme Court has not held, nor has it implied, that the right to intimate association is terminated by incarceration or that it is "irrelevant to claims made by prisoners.").

<sup>14</sup> See *Turner v. Safley*, 482 U.S. 78 (1987) (invalidating a prison regulation prohibiting inmate marriage and providing the applicable standard of review, by which four factors are relevant to determine if a prison regulation affecting a constitutional right that survives incarceration withstands constitutional challenge: (1) whether regulation has valid, rational connection to legitimate governmental interest; (2) whether alternative means are open to inmates to exercise the asserted right; (3) what impact an accommodation of right would have on guards, inmates and prison resources; and (4) whether there are ready alternatives to the regulation). See also *Washington v. Harper*, 494 U.S.



MDOC's proposed Policy "cannot be sustained" because "the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational."<sup>15</sup> There is no "valid, rational connection" between security and a blanket ban on visitation from all clergy, most blood and legal relatives, all friends, fiancés, all reporters, and all stepchildren not raised prior to their twelfth year.<sup>16</sup> Visitation has a *positive* impact on prisoner behavior and prison safety.<sup>17</sup> Frequent, high-quality visitation has been shown to *reduce* prison violence, as well as prison recidivism rates.<sup>18</sup> Visitation not only significantly decreases the risk of recidivism,<sup>19</sup> but "visits from siblings, *in-laws*, fathers, and *clergy* [are] *the most beneficial* in reducing the risk of recidivism"<sup>20</sup>—half of whom are banned by the Policy. Visits from family and friends—many to all of whom would be banned under the Policy—increases safety, reduces the risk of revocation,<sup>21</sup> and reduces recidivism: all top MDOC-identified priorities that are integral to MDOC's stated mission.<sup>22</sup>

---

210, 224 (1990) (providing that the Court "made quite clear that the standard of review we adopted in *Turner* applies to all circumstances in which the needs of prison administration implicate constitutional rights.").

<sup>15</sup> *Turner v. Safley*, 482 U.S. at 89-90; *see also id.* at 84 (providing that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution").

<sup>16</sup> *Turner v. Safley*, 482 U.S. at 89 (citations omitted). Also, many of the distinctions between groups who can visit and those who are banned are so vague, arbitrary, and irrational as to violate the Fourteenth Amendment due process and equal protection guarantees. For example, family members have been confused by what a stepchild "raised" before the age of 12 years may or may not mean, and the ban upon stepchildren raised from age 12 and above is as arbitrary as a ban on partners of the same sex. *See, e.g., Doe v. Sparks*, 733 F. Supp. 227, 234 (finding as irrational and a denial of equal protection a prison policy banning same-sex partners while allowing opposite sex ones); *see also Whitmire v. Arizona*, 298 F.3d 1134 (9th Cir. 2002) (reversing dismissal of equal protection challenge to prison's ban on same-sex kissing and hugging between prisoners and their visitors).

<sup>17</sup> Chesa Boudin et. al., "Prison Visitation Policies: A Fifty-State Survey," 32 *Yale L. & Pol'y Rev.* 149, 152 (2013) (citing an Ohio Department of Corrections study that "concluded that visitation had a positive impact on prisoner behavior and prison safety," and "found a statistically significant relationship between increased visitation and decreased rule infractions"; also citing Gary C. Mohr, *An Overview of Research Findings in the Visitation, Offender Behavior Connection*, Ohio Dep't of Rehab. & Corr. (2012), available at <http://www.asca.net/system/assets/attachments/4991/OH%20DRC%20C20Visitation%20Research%20Summary.pdf>).

<sup>18</sup> *Id.* at 151-52 (2013) (finding that, "based on substantial empirical evidence, that frequent, high-quality visitation can reduce prison violence, maintain family bonds, break the intergenerational cycle of incarceration, and smooth the reentry process, thereby reducing recidivism rates.") (citations omitted).

<sup>19</sup> Grant Duwe & Valerie Clark, *Blessed Be the Social Tie that Binds: The Effects of Prison Visitation on Offender Recidivism*, p. 27 (Nov. 2011), available at <http://cjp.sagepub.com/content/early/2011/11/21/0887403411429724> (providing that, "[a]ny visit reduced the risk of recidivism by 13 percent for felony reconvictions and 25 percent for technical violation revocations.").

<sup>20</sup> *Id.* at 21 (finding that, "any visit from a mentor reduced the risk of reconviction by 29 percent, while a visit by clergy lowered it by 24 percent. Visits from certain family members and relatives also had an impact. The risk of reconviction was reduced by 21 percent for at least one in-law visit, 10 percent for a sibling visit, and 9 percent for a visit by other relatives. In addition, we see that any visit from a friend reduced the risk by 7 percent.") (emphasis added).

<sup>21</sup> *Id.* at 21 (explaining that, "visits from siblings, in-laws, and other relatives appeared to be important in reducing the risk of revocation.").

<sup>22</sup> *See e.g.,* MDOC, "The Resource," Vol. 17: Issue 3, p. 22 (June 2016) (providing that, "[l]owering MDOC's current recidivism rate of 35.9 percent for Fiscal 2012 is one of Corrections Commissioner Marshall Fisher's goals."); MDOC, "Mission," available at <http://www.mdoc.ms.gov/about/pages/mission.aspx> (last visited Sep 12, 2016) (providing that MDOC's mission is "to provide and *promote public safety* through efficient and effective offender custody, care, control and treatment *consistent with sound correctional principles and constitutional*



In addition to undermining stated security goals, the Policy would disparately impact Mississippians of color. African-Americans are overrepresented in Mississippi prisons,<sup>23</sup> in large part because they are *as likely as whites* to use drugs but are *much more likely* to be arrested and imprisoned longer for drug-related felonies.<sup>24</sup> We incarcerate African-Americans at three times the rate of whites: in Mississippi, African-Americans account for 65 percent of our prisoners but only 37 percent of our population.<sup>25</sup>

Additionally, as Supreme Court Justices recognized decades ago, Black families, more than white families, have been “victims of economic and other disadvantages that would worsen” if they were “compelled to abandon” extended family patterns for nuclear ones.<sup>26</sup> Striking down a law allowing only nuclear families to live together, the concurrence observed: “[T]he ‘nuclear family’ is the pattern so often found in much of white suburbia,” but “[t]he Constitution cannot be interpreted . . . to tolerate the imposition by government upon the rest of us of white suburbia’s preference in patterns of family living.”<sup>27</sup> By disproportionately targeting Black families with extended family structures to achieve City objectives, the government impermissibly and “deeply intrude[d] into family associational rights that historically have been central, and today remain central, to a large proportion of our population.”<sup>28</sup>

In sum, we, the undersigned, sincerely applaud MDOC for taking time to reconsider the Policy before its enforcement. Enforcement would expose MDOC to suit in federal court for violating long-established First and Fourteenth Amendment guarantees, as well as federal law. Enforcement would also undermine MDOC’s stated mission and public policy goals to increase prison safety, to decrease revocation and recidivism, to avoid targeting Mississippians of color for

---

*standards.”*) (emphasis added); Grant Duwe & Valerie Clark, *Blessed Be the Social Tie that Binds: The Effects of Prison Visitation on Offender Recidivism* at p. 1.

<sup>23</sup> Prison Policy Initiative, “Mississippi Profile,” available at <http://www.prisonpolicy.org/profiles/MS.html> (last visited September 13, 2016) (sourcing data from Bureau of Justice Statistics, Corrections Statistical Analysis Tool).

<sup>24</sup> Eric Dolan, “ACLU: Mississippi’ drug enforcement tactics amount to a ‘reign of terror,’” *The Raw Story* (March 28, 2011 at 10:14pm) available at <http://www.rawstory.com/rs/2011/03/28/aclu-mississippi-drug-enforcement-amounts-to-reign-of-terror/>.

<sup>25</sup> Ashley Nellis, “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” *The Sentencing Project* (June 2016) available at <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>; The Sentencing Project, “The Sentencing Project Interactive Map,” available at <http://www.sentencingproject.org/map/map.cfm#map>; Thomas P. Bonczar & Allen J. Beck, “Lifetime Likelihood of Going to State or Federal Prison,” U.S. Department of Justice, p. 2-3 (March 1997) (providing that, nationwide, one out of every three Black males and one out of every six Latino males will be imprisoned during his lifetime, compared with only one in eleven white males who will face a similar fate); *Racial Disparities in the Criminal Justice System: Hearing Before the Subcomm. On Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 111th Cong. 59 (2009) (statement of Marc Mauer, Executive Director, The Sentencing Project), available at [http://judiciary.house.gov/hearings/printers/111th/111-78\\_53093.PDF](http://judiciary.house.gov/hearings/printers/111th/111-78_53093.PDF).

<sup>26</sup> *Moore v. City of E. Cleveland, Ohio*, 431 U.S. at 509 (Brennan, J., and Marshall, J., concurring) (citations omitted).

<sup>27</sup> *Id.* at 508 (citations omitted).

<sup>28</sup> *Id.* at 509 (citations omitted) (noting also that, nationwide, 48% of Black households headed by an elderly woman, compared with 10% of such white households, included related minor children not offspring of the head of the household).

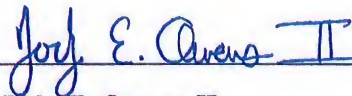
However, there unfortunately continues to be substantial confusion since the Policy's announcement and postponement,<sup>29</sup> including on the part of MDOC institutions and family members informed that the Policy could be enforced at any moment. For them, MDOC should publically post or announce that the Policy is no longer being considered for implementation. To the extent that it is, MDOC should be advised that the Policy's enforcement would be unconstitutional, violate federal law, and would therefore expose MDOC to suit in federal court.

Thank you sincerely for your consideration. If you would like to discuss these issues, please do not hesitate to contact us.

Sincerely,



**Paloma Wu, Legal Director\***  
**ACLU of Mississippi**  
P.O. Box 2242  
Jackson, MS 39225  
Tel: 601-354-3408  
pwu@aclu-ms.org  
*\*Not Admitted In MS; Admitted In CA & PA*



**Jody E. Owens, II**  
**Director, Mississippi Office**  
**Southern Poverty Law Center**  
111 East Capitol Street, Suite 280  
Jackson, MS 39201  
Tel: 601-948-8882  
jody.owens@splcenter.org

---

<sup>29</sup> To our knowledge, MDOC has made no formal statement to the public regarding the fact of or the nature of the Policy's status. For a cost of \$97, MDOC responded to the ACLU's record request (for visitation policies in place and for future policies being considered), providing that the memos "reflect a change in the visitation policy" but that there is "no change to date" to the visitation policy. The message has been confusing to institutions bound by MDOC's policies. *See, e.g.,* William Moore, "MDOC postpones strict visitation rules rollout," *The Daily Journal* (Sept. 3, 2016), available at <https://djournal.com/news/mdoc-postpones-strict-visitation-rules-rollout/> (quoting a warden who explained, "We got a directive Wednesday evening announcing it," and on Thursday, "the next thing we know they sent out the stand down order". . . "I don't know the reason behind it"; quoting a private prison communications director as stating, "[W]e work for (MDOC)," so "[i]f they change their visitation policy, then we will change our visitation policy."); Christie Thompson, "Mississippi Limits Prison Visits to Immediate Family," *The Marshall Project* (Sept. 6, 2016), available at <https://www.themarshallproject.org/2016/09/01/will-mississippi-limit-prison-visits-to-immediate-family> ("A spokesperson for MDOC did not respond to a request for comment").





STATE OF MISSISSIPPI  
DEPARTMENT OF CORRECTIONS  
MARSHALL FISHER  
COMMISSIONER

Jacquelyn Banks, Superintendent  
South Mississippi Correctional Institution

Post Office Box 1419  
Leakesville, MS 39451  
(601) 394-5600

**TO: All SMCI Area II Offenders**

**FROM: Marshal Turner, Warden- SMCI Area II**

**DATE: August 31, 2016**

**RE: Change in Visitation Policy**

---

**Effective September 1, 2016, visitors will be of immediate family as defined by MDOC. Also, Offenders will be limited to ten (10) persons of immediate family as defined by MDOC on their visitation list at any one time.**

MDOC has defined immediate family as: a spouse, children, stepchildren raised prior to age 12, brothers, sisters, parents, grandparents, grandchildren, or person documented as acting in place of parent as surrogate prior to age 12 (i.e., foster parent, stepparent, or relative who raised the individual as a child) and can be documented by law enforcement, school, Human Services records, or employer statement.

**This excludes ALL friends, pastors, girlfriends, fiancés, cousins, nephews, nieces, aunts, uncles, in-laws and anyone else that is not listed above.**

MT/jw

Cc: Mrs. Jacquelyn Banks, Superintendent  
Mrs. Katherine Blount, Associate Warden, SMCI Area II  
Ms. Regina Reed, SMCI Acting Deputy Warden  
Mr. Joe Errington, Deputy Warden, SMCI Central Security  
All Area II Captains  
All Area II Case Managers  
Area II Visitation  
Front Gate  
SMCI K-9 Unit



STATE OF MISSISSIPPI  
DEPARTMENT OF CORRECTIONS  
MARSHALL FISHER  
COMMISSIONER

Ronald King, Superintendent  
Central Mississippi Correctional Facility

Post Office Box 88550  
Pearl, Mississippi 39208

To: All Areas CMCF I, II and III

From: Warden Brian Ladner

Date: September 1, 2016

Re: Visitation Changes

Please be advised that effective September 5, 2016, offenders housed at Mississippi Department of Correctional Facility will only be allowed visits from immediate family only as defined by MDOC. (No aunts, uncles, nieces, nephews, cousins, or fiances). Offenders will be limited to ten (10) persons (immediate family only) on their visitation list.

BL/bcg

Cc: Warden Wendell Banks  
Deputy Warden Joann Shivers  
Deputy Warden Georgia Shelby  
Associate Warden Bettye Phillips  
Shift Commanders  
Case Managers  
Visitation



MEMORY TRANSMISSION REPORT

TIME : 10-26-2016 16:40  
FAX NO. 1 : 6013556465  
NAME :

FILE NO. : 677  
DATE : 10.26 16:35  
TO : 6013595680  
DOCUMENT PAGES : 8  
START TIME : 10.26 16:35  
END TIME : 10.26 16:40  
PAGES SENT : 8  
STATUS : OK

\*\*\*SUCCESSFUL TX NOTICE\*\*\*



October 26, 2016

BY FAX TO: (601) 359-5680  
Commissioner Marshall L. Fisher  
Office of the Commissioner  
Mississippi Department of Corrections  
633 North State Street  
Jackson, MS 39202  
Tel: (601) 359-5600

*Re: Mississippi Department of Corrections' (MDOC) Proposed "Immediate Family Only" Visitation Policy Is Unconstitutional, Violates Federal Law, And Undermines MDOC's Mission*

Dear Commissioner Fisher:

We are writing on behalf of family members and religious leaders regarding MDOC's proposed policy to exclude all visitors except "immediate family" as defined by MDOC. The Policy was announced on August 31, 2016 and then postponed. MDOC should publically post that they no longer plan to implement the Policy. If the Policy is still under consideration, MDOC should be advised that the Policy's enforcement would be unconstitutional, violate federal law, and would therefore expose MDOC to suit in federal court. The Policy provides:

**Effective September 1, 2016, visitors will be of immediate family as defined by MDOC. Also, Offenders will be limited to ten (10) persons of immediate family as defined by MDOC on their visitation list at any one time.**

MDOC has defined immediate family as: a spouse, children, stepchildren raised prior to age 12, brothers, sisters, parents, grandparents, grandchildren, or persons documented as acting in place of parent as surrogate prior to age 12 (i.e., foster parent, stepparent, or relative who raised the individual as a child) and can be documented by law enforcement, school, Human Services records, or employer statement.

**This excludes ALL friends, pastors, girlfriends, fiancés, cousins, nephews, nieces, aunts, uncles, in-laws and anyone else that is not listed above.<sup>1</sup>**

<sup>1</sup> MDOC initially announced the Policy on posted notices bearing the seal of MDOC Commissioner Fisher, *see, e.g., Attachments*. It later delayed enforcement, *see id.*, then postponed the policy for an unknown period of time. *See, e.g.,* Jerry Mitchell & Sarah Fowler, "MDOC postpones visitation change," *The Clarion-Ledger* (Sept. 6, 2016), available at <http://www.clarionledger.com/story/news/2016/09/06/mdoc-postpones-visitation-change/89922172/> (providing no source or timeframe for the news regarding postponement).